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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,665	10/20/2000	Herve Andrean	06028 0016	9090

22852 7590 05/26/2005

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,665

Applicant(s)

ANDREAN ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4.29.2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-100 is/are pending in the application.
- 4a) Of the above claim(s) 21-25,30-37,40-41,43,54-55,58-60,65-72,75-76, 78 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20,28,29,38,39,42,44-53,56,57,63,64,73,74,77 and 79-100 is/are allowed.
- 6) ☒ Claim(s) 26,27,61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/29/2005 has been entered.

Claim Rejections - 35 USC § 112

2 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 26-27 and 61-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 26, 27, 61 and 62 are indefinite because the claims recite the limitation "2,6-dihydroxy-3-cyano-4-methylpyridine". There is insufficient antecedent basis for this limitation in these claims, because in the pyridine derivatives of a formula (VII), none of R13 and R14 recites a cyano radical.

Allowable Subject Matter

3 Claims 17-20, 28-29, 38-39, 42, 44-53, 56-57, 63-64, 73-74 and 79-100 are allowed because the prior art of record do not teach or disclose a dyeing composition comprising a multi-compartment device, a process for dyeing or a dyeing composition comprising at least one compound that comprises at least one active methylene group chosen from the selected claimed compounds in combination with at least one compound chosen aldehydes, ketones, quinones,

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diiminoisoindoline derivatives and 3-aminoisoindolone derivatives wherein the multi-compartment device and the dyeing formulation do not comprise oxidizing agents and wherein the dyeing process also achieved without oxidizing agents.

4 Claims 26-27 and 61-62 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Applicant's Arguments

5 Applicant's arguments filed 4/29/2005 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C. 112, 2nd paragraph, Applicant argues that R13 and R14 in the claimed formula (VII), are chosen from alkyl groups optionally substituted and wherein the optionally substituted alkyl group can be a carbon atom substituted with a nitrogen atom to form a cyano group (-CN). Applicant further argues that 2,6-dihydroxy-3-cyano-4-methyl pyridine is among other possible compounds falling within the purview of the claimed formula (VII) as shown in the specification which is considered as an evidence to support the inclusion of cyano groups within the meaning of "alkyl groups, optionally substituted."

The examiner respectfully disagrees with the above arguments because the cyano group (-CN) is a functional group and chemically cannot be formed in a simple substitution reaction by replacing all the hydrogen atoms in the alkyl group (-CH₃) with a nitrogen atom to form a cyano radical. Further, although the claims are interpreted in light of the specification, limitations from

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the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
Art Unit 1751

May 22, 2005